



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,664	04/17/2004	Martin Baecke		9575

23616 7590 07/12/2005

LAW OFFICES OF CLEMENT CHENG  
17220 NEWHOPE STREET #127  
FOUNTAIN VALLEY, CA 92708

EXAMINER

PATEL, NIHIR B

ART UNIT PAPER NUMBER

3743

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/826,664

Applicant(s)

BAECKE, MARTIN

Examiner

Nihir Patel

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on May 5<sup>th</sup>, 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Arguments***

Applicant's arguments with respect to claims **15-29** have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims **15 through 17, 20, 21, 27 and 28** are rejected under 35 U.S.C. 102(b) as being anticipated by Howe (US 4,819,625).

**Referring to claim 15**, Howe discloses a nebulizer heater that comprises a storage tank **12** (see **figures 1 and 2 and column 2 lines 30-35**) for a liquid, the storage tank having an opening at its bottom and a casing (see **column 2 lines 40-45**); the opening of the storage tank mostly but not entirely imperviously closed to a bottom portion of the casing having; the opening of the storage tank being below the liquid level in the storage tank during operation (**ee figures 1 and 2 and column 2 lines 30-45**).

**Referring to claim 16**, Howe discloses an apparatus wherein there is a position at which the edge of the opening of the storage tank is spaced away from the portion of the casing farther than usual (see **figures 1 and 2**).

**Referring to claim 17**, Howe discloses an apparatus wherein the storage tank is made of one piece (see **figures 1 and 2**).

**Referring to claim 20**, Howe discloses an apparatus wherein the casing is constructed such that, when the storage tank is installed and at least partially filled with liquid, a thin liquid layer is formed in the casing net to the opening of the storage tank, above which gas can be passed along (see figure 2).

**Referring to claim 21**, Howe discloses an apparatus wherein a heater is disposed underneath the position provided for the thin liquid layer (see figure 2 and column 3 lines 45-55).

**Referring to claim 27**, Howe discloses an apparatus wherein the storage tank opening forms a substantially even rim with a notch (see figure 1 and 2).

**Referring to claim 28**, Howe discloses an apparatus that further comprises an evaporator casing housing the storage tank, and formed to mostly but not limited entirely imperviously close with an opening of the storage tank (see figure 1 and 2).

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howe (Us 4,819,625) in view of Wood et al. (US 4,676,237)

**Referring to claim 18 and 19**, Howe discloses the applicant's invention with the exception of providing a seal that is arranged between the casing and the storage tank so as to produce a gas-proof connection between the casing and the storage tank. Wood discloses an

Art Unit: 3743

inhaler device that does provide a seal that is arranged between the casing and the storage tank so as to produce a gas-proof connection between the casing and the storage tank. Therefore it would have been obvious to modify Howe's invention by providing a seal that is arranged between the casing and the storage tank so as to produce a gas-proof connection between the casing and the storage tank as taught by Wood in order for the invention to work to its fullest capability.

Claims **22 through 26 and 29** are rejected under 35 U.S.C. 103(a) as being unpatentable over Howe (US 4,819,625) in view of Miller (US 5,916,493).

**Referring to claim 23**, Howe discloses the applicant's invention as claimed with the exception of providing an evaporator that further comprises a bottom part having an electrical terminal detachably connected to the casing by a spike and a catch. Miller discloses a humidifier system that does provide an evaporator that further comprises a bottom part having an electrical terminal detachably connected to the casing by a spike and a catch (**see figures 1 and 2**). Therefore it would have been obvious to modify Howe's invention by providing an evaporator that further comprises a bottom part having an electrical terminal detachably connected to the casing by a spike and a catch as taught by Miller in order for the invention to work to its fullest capability.

**Referring to claim 26**, Howe discloses the applicant's invention as claimed with the exception of providing a gas lock that is located between the gas inlet and the gas outlet. Miller discloses a humidifier system that does provide a gas lock that is located between the gas inlet and the gas outlet. Therefore it would have been obvious to modify Howe's invention by providing a gas lock that is located between the gas inlet and the gas outlet as taught by Miller in order for the invention to work to its fullest capability.

**Referring to claim 29**, Howe discloses the applicant's invention as claimed with the exception of providing an opening that forms a substantially even rim, the rim having a notch, the notch constituting a well-defined leakage when the rim is pressed against a plane. Miller discloses a humidifier system that does provide an opening that forms a substantially even rim, the rim having a notch, the notch constituting a well-defined leakage when the rim is pressed against a plane. Therefore it would have been obvious to modify Howe's invention by providing an opening that forms a substantially even rim, the rim having a notch, the notch constituting a well-defined leakage when the rim is pressed against a plane as taught by Miller in order for the invention to work to its fullest capability.

**Referring to claim 22**, the applicant claims that the heater is made of a PTC resistor. When reviewing the applicant's specifications the examiner found no criticality on why the heater must be made of PTC resistor. Therefore the examiner came to a conclusion that the heater used in Miller's invention would achieve the same results as the PTC resistor as claimed in claim 22.

**Referring to claim 24**, the applicant claims that the evaporator further comprises a bottom part having an electrical terminal detachably connected to the casing by a spike and a catch, the electric contact between the heater and the electrical terminal being produced via contact surfaces on the casing and contact spring pins in the bottom part. When reviewing the applicant's specification the examiner found no criticality on why the electric contact between the heater and the electrical terminal must be produced via contact surfaces on the casing and contact spring pins in the bottom part. Therefore the examiner came to a conclusion that the

Art Unit: 3743

method used in Miler's invention would achieve the same results as the method described in claim 24.

**Referring to claim 25**, the applicant claims that the evaporator further comprises a bottom part having an electrical terminal detachably connected to the casing by a spike and a catch, the electric contact between the heater and the electrical terminal being produced via plugs mechanically connected to the upper part and sockets arranged in the bottom part in a hidden manner. When reviewing the applicant's specification the examiner found no criticality on why the electric contact between the heater and the electrical terminal must be produced via plugs mechanically connected to the upper part and sockets arranged in the bottom part in a hidden manner. Therefore the examiner came to a conclusion that the method used in Miler's invention would achieve the same results as the method described in claim 25.

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

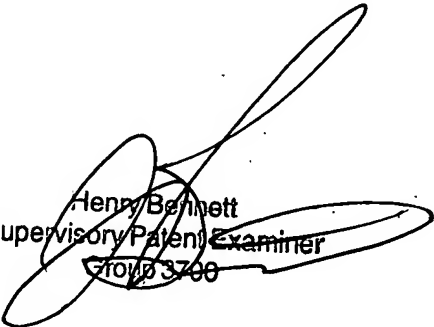
Art Unit: 3743

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (571) 272 4791.

NP

June 28<sup>th</sup>, 2005



Henry Bennett  
Supervisory Patent Examiner  
Group 3700